Supreme Court, U.S.
FILED
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No. 00-1483

In The

# Supreme Court of the United States

STEPHEN M. CRAMPTON, et al.,

*Petitioners,*

v.

HONORABLE TIMOTHY E. ERVIN, et al.,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

1. Whether Petitioners have shown standing to challenge the constitutionality of Mississippi's guardianship statutes?

## LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. Petitioners include:

**Stephen M. Crampton**, Individually and as Natural Parent and Next Friend of Stephen Joseph Crampton, a Minor and

**Shelly P. Crampton**, Individually and as Natural Parent and Next Friend of Stephen Joseph Crampton, a Minor.

Respondents include:

**Honorable Timothy E. Ervin**, In his Official Capacity as Chancellor for the Lee County Chancery Court,

**Richard Maynard**, Individually and as Natural Parent and Next Friend of Matt Maynard, a Minor and

**Chris Maynard**, Individually and as Natural Parent and Next Friend of Matt Maynard, a Minor.

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## STATEMENT OF THE CASE

Petitioners' Statement of the Case is deficient in one critical respect: it does not reveal that at all relevant times in this case there was **no settlement agreement** reached between Petitioners and the Maynards. The Maynards, through their insurance carrier, did make a settlement offer to Petitioners which was conditioned upon approval of the settlement by the chancery court and the receipt of a valid and binding release. Such offer was rejected by the Petitioners and no settlement agreement was ever reached. At no time prior to, or since, the filing by Petitioners of their complaint attacking the constitutionality of Mississippi's guardianship statutes was there, or is there presently, an outstanding settlement offer to Petitioners from the Maynards, or a settlement demand outstanding from the Petitioners. At no time did either the district court or the Fifth Circuit Court of Appeals consider Petitioners' substantive claims.

## ARGUMENT

### Petitioners Lack Standing to Bring this Action.

The petition for writ of certiorari should be denied, quite simply, because Petitioners have no standing to bring the underlying action. There is no active case or controversy between the Petitioners and the Maynards to be decided by any court. Both the district court and Fifth Circuit Court of Appeals correctly determined that Petitioners lack standing to bring this claim. To satisfy Article III of the United States Constitution, an actual, ongoing case or controversy must exist. *Lewis v. Continental Bank*

*Corp.*, 494 U.S. 472, 477, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990). The minimum constitutional requirements necessary to meet Article III are:

> (1) injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical;
>
> (2) causation, meaning that the injury is 'fairly traceable to the challenged action of the defendant'; and
>
> (3) redressability, meaning that 'it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision'.

*Valley v. Rapides Parish School Bd.*, 145 F.3d 329, 332 (5th Cir. 1998) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992)).

**a. Injury in fact.**

A claim is not ripe for adjudication if it rests upon "contingent future events that may not occur as anticipated, or indeed may not occur at all." *Valley*, 145 F.3d at 333 (quoting *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 581, 105 S.Ct. 3325, 333, 87 L.Ed.2d 409 (1985)). There is no outstanding settlement agreement between the Petitioners and the Maynards. There is nothing to take before a Mississippi Chancellor.[1] Petitioners,

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[1] Since it is not likely that a settlement offer will be forthcoming from the Maynards it is possible that Petitioners will sue the Maynards to recover damages for Joseph's injury.

therefore, rely on this Court's decisions holding that one is not required to suffer injury to obtain preventive relief in order to establish injury-in-fact. *Petitioners' Petition* pp. 14-16. However, in the primary case relied on by Petitioners, this Court held "[A] plaintiff who challenges a statute must demonstrate a *realistic*, i.e., imminent, danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (emphasis added). Petitioners claim that in light of an alleged irrebuttable presumption of parental unfitness in Mississippi's guardianship statutes, a realistic threat of injury exists. *Petitioners' Petition* p. 15. Petitioners' assertion that such presumption exists is defeated by the language of the statutes themselves and Mississippi case law.[2] The overwhelming majority of Petitioners'

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The success of such a suit certainly can not be assumed; however, if Joseph was awarded a judgment, the Maynards would pay such judgment amount into the circuit court which tried the case and such court would issue a Satisfaction of Judgment to them. Such Satisfaction releases the Maynards from the case fully and forever, including relieving them of participation in how the judgment is to be paid to the minor, Joseph. The payment of the judgment proceeds to the minor is a determination to be made by the Circuit Court. Therefore, the situation could in no way give rise to any controversy between Petitioners and the Maynards regarding the applicability of Mississippi's guardianship statutes. See, Miss. Code Ann. § 11-7-189 (2000) (App. 2) and Rule 67 of the Miss. R. Civ. P. (App. 2).

[2] See, Miss. Code Ann. §§ 93-13-1, -5 set forth on App. 1 and §§ 93-13-13 and -211, which are set forth in the Appendix to *Petitioners' Petition*, pp. App. 14-17. See also, *Britt v. Allred*, 25 So.2d 711 (Miss. 1946) (holding that a child's parents cannot,

arguments are based upon custodial issues. However, the custody of wards is not relevant to the issues in this case.[3]

A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing. *Trinity Industries, Inc. v. Martin*, 963 F.2d 795, 798 (5th Cir. 1992) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 15-56, 110 S.Ct 1717, 1723, 109 L.Ed.2d 135 (1990)). This Court cannot assume or presume that a particular outcome might occur, when no facts can be found in the record to support such contention, in order to reach the conclusion Petitioners may suffer injury.[4] Such action

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under the due process of law provisions of the state and federal constitutions, be deprived by a judicial proceeding of their parental rights without notice thereof, and an opportunity to be heard in opposition thereto) and *McKee v. Flynt*, 630 So. 2d 44, 47 (Miss. 1993) (Chancellor could not award custody to third party without finding that parents were unfit).

[3] In addition to custodial issues, Petitioners complain of the necessity to get court approval to purchase school supplies, to determine where to school Joseph and in order to move Joseph from the county. *Petitioners' Petition* p. 4. Petitioners misconstrue the statutes: the approval necessary would be the decision to use the minor's funds to pay such expenses, i.e., secondary school expenses, an expense which is the responsibility of the parents. See, *Saliba v. Saliba*, 753 So.2d 1095, 1099 (Miss. 2000) A minor having his/her own estate does not relieve the parents of their duties to support and care for their minor children. *Id.*

[4] Petitioners have not shown that they have been denied any right; or that there is some kind of precedent for alleging the chancery court would act in the manner alleged in the Petition (including that such statutes include an irrebuttable presumption of parental unfitness). In fact, Mississippi law shows just the opposite. See, *Guardianship of Faust*, 123 So.2d 218, 220 (Miss. 1960) ("The mere fact that appellant was appointed

would in effect be a ruling upon a hypothetical situation which the courts continually refuse to do. See, e.g., *Lewis v. Continental Bank Corp.*, *Babbitt v. United Farm Workers Nat'l Union*, *Valley v. Rapides Parish School Board*, and *Lujan v. Defenders of Wildlife*. There are no facts in this case which would tend to show that the Maynards' requirement of approval of the settlement by the appropriate chancery court would result in *any* injury, concrete, particular, actual, imminent or otherwise to Petitioners.

**b. Causation**

Petitioners argue that the Maynards have somehow violated their constitutional rights, causing injury to them, by conditioning the settlement offer upon chancery court approval of the minor's settlement. *Petitioners' Petition* pp. 5 & 15. To prove causation, Petitioners must show that the alleged injury is fairly traceable to the Maynards' requirement for chancery court approval. To trace the alleged injury to the Maynards, the Petitioners must establish that the Maynards were "state actors" for purposes of 42 U.S.C. § 1983. This they have failed to do. In order for the Maynards, as private persons, to be held liable under Section 1983, the Petitioners must establish that the Maynards may fairly be said to be "state actors."

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guardian of the persons, as well as estates, of his children did not vest the chancery court with the right to invade parental prerogatives."); *McKee v. Flynt*, 630 So. 2d 44, 47 (Miss. 1993) (Chancellor could not award custody to third party without finding that parents were unfit).

This Court has established a two-prong test in determining state action:

> As the Court said in *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349, 95 S.Ct. 449, 453, 42 L.Ed.2d 477 (1974):
>
> > . . . First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible. In *Sniadach, Fuentes, W. T. Grant,* and *North Georgia,* for example, a state statute provided the right to garnish or to obtain prejudgment attachment, as well as the procedure by which the rights could be exercised. Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor. This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the State. **Without a limit such as this, private parties could face constitutional litigation whenever they seek to rely on some state rule governing their interactions with the community surrounding them.** [emphasis added]

*Lugar v. Edmondson Oil Company, Inc.*, 457 U.S. 922, 936-37, 102 S.Ct. 2744, 2753-54 (1982).

In this analysis, **action by a private party pursuant to a statute, without something more, is not sufficient to justify a characterization of that party as a "state actor".** *Lugar*, 457 U.S. at 939, 102 S.Ct. at 2754. The District Court correctly determined that the floodgates of litigation would be opened to parties asserting that provisions of

various statutes were wielded against them by private citizens during the course of contract negotiations and other business dealings if the Maynards were found to be state actors. *Petitioners' Petition* p. App. 10 (*Memorandum Opinion).*

The Maynards simply made a settlement offer, requiring chancery court approval since the payee was a minor and could not otherwise bind himself to the settlement. That offer was rejected by Petitioners. Petitioners' argument that the Maynards are state actors because they were "compelled" to require appointment of a guardian as a condition of the settlement fails. *Petitioners' Petition* p. 15. The statutes in question do not compel a certain act by the Maynards, it simply recognizes a minor's inability to contract for him/herself and protects such minor's rights by not recognizing settlements as valid without chancery court approval. The Maynards could have simply paid the money and taken their chances. Therefore, the action required by *Flagg Bros., Inc. v. Brooks,* 436 U.S. 149, 98 S.Ct. 1729, 56 L.Ed.2d 185 (1978) and the other cases set forth in Petitioners' Petition is not present here. *Petitioners' Petition* p. 15.

The Maynards did not act together with any state official nor obtain any aid from state officials; they simply protected their own interests in attempting to obtain a final and binding settlement with a minor. It is spurious for Petitioners to argue that the Maynards caused the application of the statutes which they claim are unconstitutional on their face. Petitioners have not shown that the alleged injury suffered is fairly traceable to the challenged action of the Maynards and have failed to meet the causation requirement of *Valley.* The Maynards have

"no dog in this fight" and should not be parties to this lawsuit.

**c. Redressability.**

Petitioners have asked this Court to declare as unconstitutional statutes codifying and expanding ancient common law designed for the sole purpose of preserving the estates of minors. See, *Magna Carta*, 1215, King John.[5] Petitioners' arguments are centered around the statutes governing custodial issues of wards by guardians, which are not at issue here. Potential settlement proceeds, less funds to pay medical expenses (not Joseph, the person) were the only thing potentially subject to the guardianship laws in this instance.

Petitioners' facial challenge and challenge as applied fail for obvious reasons. The natural parents are considered fit for purposes of this statute, unless otherwise determined by the court. Miss. Code Ann. § 93-13-211 (2000). See also, Miss. Code Ann. § 93-13-1 (2000). While the statute was never applied to Petitioners, there is no expectation that such application would infringe upon a parent's rights to act in the best interest of a minor. See, *Guardianship of Faust*, 123 So.2d at 220. Therefore, it is not likely that Petitioners' claims will be redressed with a favorable decision.

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[5] As confirmed by Henry II in 1225 and Edward I in 1297 and as followed in every common law jurisdiction since that time.

**d. Prudential Concerns.**

Once the constitutional requirements have been met, a court must satisfy prudential concerns balancing the need to expend its resources on a case it may never need to decide against the expense and hardship to the parties of having a delayed adjudication. *Valley*, 745 F.3d at 332. The prudential concerns include:

1. whether the plaintiff's complaint falls within the zone of interests protected by the statute or constitutional provision at issue;
2. whether the complaint raises abstract questions amounting to generalized grievances which are more appropriately resolved by legislative branches; and
3. whether the plaintiff is asserting his or her legal rights and interests rather than the legal rights and interests of third parties.

*Doe ex rel. Doe v. Beaumont Independent School Dist.*, 173 F.3d 274, 281 (5th Cir. 1999) (quoting *Murray v. City of Austin*, 947 F.2d 147, 151 (5th Cir. 1991, *cert. denied*, 505 U.S. 1219, 112 S.Ct. 3028, 120 L.Ed.2d 899 (1992))). Prudential concerns dictate a ruling that Petitioners lacked standing to bring suit. In order to support their claim, Petitioners rely on this Court's recent decision in *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054 (2000), holding that parents have certain rights in the raising of their children and further holds there is a presumption that fit parents act in the best interests of their children. Mississippi law is not contrary to *Troxel*. Furthermore, parental rights are not at issue here, as the parent of a minor has no fundamental right in the estate of a minor, even for use to discharge obligations of the parents, which benefit the

minor. Petitioners espouse no right of their own which is protected by the guardianship statutes. Petitioners' complaints are nothing more than a "generalized grievance" regarding the guardianship statutes.

## CONCLUSION

It is undisputed that there was and is no settlement agreement between Petitioners and the Maynards. Petitioners have failed to show any facts which meet the requirements in *Lujan v. Defenders of Wildlife* necessary to establish Article III standing. The applicable statutes here, Miss. Code Ann. § 93-13-1, et al., do not purport to create the situations described by Petitioners in their Petition for Writ of Certiorari. There are simply no facts in the record from which this Court can determine standing on Petitioners' behalf without embellishing the allegations to support standing offered by Petitioners. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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## Miss. Code Ann. § 93-13-1 (2000)

### § 93-13-1. Parental guardianship of minor children.

The father and mother are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare and education, and the care and management of their estates. The father and mother shall have equal powers and rights, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of such minor, or any other matter affecting the minor. If either father or mother die or be incapable of acting, the guardianship devolves upon the surviving parent. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to its custody. But if any father or mother be unsuitable to discharge the duties of guardianship, then the court, or chancellor in vacation, may appoint some suitable person, or having appointed the father or mother, may remove him or her if it appear that such person is unsuitable, and appoint a suitable person.

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## Miss. Code Ann. § 93-13-5 (2000)

### § 93-13-5. When guardian not entitled to custody of ward.

The guardian of a ward whose father or mother is living, and a suitable person to have the custody of the ward, shall not be entitled, as against the parent, to the custody of the ward, but the guardian of a ward who has no parent shall be entitled to the custody of the ward as

well as the estate, or the court or chancellor may appoint one (1) person to be guardian of the person, and another to be guardian of the estate of the ward.

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**Miss. Code Ann. § 11-7-189 (2000)**

**§ 11-7-189. Enrollment of judgments; judgment roll; satisfaction.**

(1) The clerk of the circuit court shall procure and keep in his office one or more books to be styled "The Judgment Roll," which book or books shall be appropriately divided under the several letters of the alphabet, and on each page shall be placed the following captions:

| Defendant's Name and Name of Defendant's Attorney and Post Office Address of Each | Amount of Judgment or Decree | Date of Rendition | County and Court in Which Rendered | Social Security or Tax Identification Number |
|---|---|---|---|---|
| Date, Hour and Minute of Enrollment | Plaintiff's Name, Plaintiff's Attorney, and Post Office Address of Each | | When and How Satisfied | Remarks |

The clerk shall, within twenty (20) days after the adjournment of each term or court, enroll all final judgments rendered at that term in the order in which they were entered on the minutes by entering on The Judgment Roll under the proper letter or letters of the alphabet, the name of each and every defendant to such judgment, the post office address of each defendant, and the social security or tax identification number of each defendant if such information is known or readily ascertainable, and if such defendant or defendants have an attorney at law in such case the name and post office address of such attorney or firm of attorneys if such post office address is known or readily ascertainable; the amount of such judgment; date of rendition; county and court in which rendered; the date, hour and minute of enrollment; and the name of the plaintiff or plaintiffs and the post office address of each plaintiff if readily ascertainable, and if represented by an attorney at law or a firm of attorneys then the name and post office address of such attorney or firm of attorneys if the post office address is known or readily ascertainable. The name of the attorney or firm of attorneys and post office addresses of the parties may be subsequently inserted by the clerk at any time.

Notwithstanding the foregoing, the failure to list a social security number on a judgment roll shall not invalidate said judgment nor shall it make the party failing to list said judgment liable for such failure to list or the recording official liable for such failure.

(2) Any attorney of record representing a plaintiff or plaintiffs in the case may, for and on behalf of his client or clients, satisfy in whole or in part a judgment on

such Judgment Roll by endorsing thereon the extent of such satisfaction and signing an entry so showing, and when so satsified the clerk shall attest and subscribe such endorsement under the proper heading therein. When any judgment shall otherwise be satisfied, the clerk shall so enter under proper heading and subscribe the entry.

(3) The Judgment Roll may be kept on computer as provided in Section 9-7-171. In such case the plaintiff or attorney representing such plaintiff shall present to the clerk a sworn affidavit directing the clerk to cancel or otherwise show as satisfied the judgment recorded under this section.

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**Miss. Rules of Civil Procedure – Rule 67**

**Rule 67. Deposit in Court**

In any action in which any part of the relief sought is judgment for a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing.

Where money is paid into court to abide the result of any legal proceeding, the judge may order it deposited at interest in a federally insured bank or savings and loan association authorized to receive public funds, to the credit of the court in the action or proceeding in which the money was paid. The money so deposited plus any interest shall be paid only upon the check of the clerk of

the court, annexed with its certified order for the payment, and in favor of the person to whom the order directs the payment to be made.